IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

J U D G M E N T

Hanja Ram & Others. vs. State of Rajasthan and others.

D.B.CIVIL SPECIAL APPEAL NO. 299/2006 against the order dated 21/4/2006 passed in S.B.CIVIL WRIT PETITION NO.385/95.

DATE OF JUDGMENT : 29th May, 2006

P R E S E N T

HON'BLE SHRI RAJESH BALIA, J.

HONB'LE SHRI R.P.VYAS, J.

Mr.Ranjeet Joshi, for the appellants.

BY THE COURT: (PER HON'BLE RAJESH BALIA, J.)

This appeal is directed against the judgment of learned Single Judge dated 21/4/2006 by which two writ petitions were decided.

Predecessors of respondent-petitioner namely Smt. Sunder Devi and her son filed a revenue suit no. 61/66 in the Court of Assistant Collector, Bhinmal on 16/2/1966 for declaration of their title. Plaintiffs claimed that they were in

possession for long and because defendants namely Taria son of Ruga, Bhadaria son of Ruga, Prahalad son of Deepa, Harji son of Loomba and Dharma son of Ghuda Bhambi all legal representatives of deceased Ruga were working as his Halis, therefore, at the time of settlement name of Ruga was entered in the land records as Khatedar, which is incorrect and, therefore, mutation entry has been wrongly made, which need to be corrected. The cause of action stated to be that because name of Ruga has been entered in the land record, defendants – heirs of Ruga are creating obstructions in their possession. Two separate written statements were filed, one by Bhadaria and another by Taria, Prahalad, and Dharma in July 1966.

On the aforesaid pleading decree was passed by the Assistant Collector in favour of plaintiffs on 12/7/1968. Apart from referring to the written statements of admission, learned Assistant Collector also referred to Khasra Girdawari from Samvat year 2012 to 2017 i.e. to say calender year 1955 to 1960 and receipts of `bigodi' in which names of plaintiffs were entered as cultivators. Considering these aspects the Assistant Collector held that they are entitled to tenancy rights in terms of Section 19 of the Rajasthan Land Revenue Act. After the decree was passed in 1968, the plaintiffs transferred the aforesaid land firstly in favour of Yasin Khan and Ayub Khan by registered sale deed dated 16/1/1969 and same was entered in the name of

Yasin Khan and Ayub Khan. Said Yasin Khan and Ayub Khan further transferred the said land to Lachha Ram and his sons of Bhinmal vide registered sale deed dated 26/4/1972 and said Lachha Ram transferred the said Land in favour of petitioners on 10/7/1972 and same was mutated in the name of Saraswati Devi, since deceased, on 13/12/1972. After the death of Saraswati Devi, land was mutated in the name of petitioners on 29/1/1979.

After all this happened, an application was moved by present appellants, who are sons of Prahalad and Dharma for setting aside the decree passed by S.D.O. Bhinwal on 12/7/1968. On the basis of entries made in Jamabandi of Samvat Year 2016 to 2019, the Board of Revenue assumed that it was transfer of land by the khatedars in violation of Section 42 of the Rajasthan Tenancy Act and that the transfer being void ab initio was liable to be set aside. The learned Member of the Board of Revenue rejected all the objections as to the pendency of the application for making reference before the Collector on the ground that pendency of the proceedings under Section 232 of the Rajasthan Tenancy Act before the Collector or making of an application are irrelevant and does not affect the validity of the proceedings. The fact that the Assistant Collector has relied on the Khasra Girdawari for holding that plaintiffs were in possession of the land since before commencement of the Rajasthan Tenancy Act,

1955 was also of no assistance because of the entry in Jamabandi for Samvat Year 2016-2019 of Ruga and others and on these findings the decree passed by S.D.O. On 12/7/1968 was set aside.

Aggrieved with the aforesaid order passed of Board of Revenue dated 18/10/1994, a writ petition was preferred before this Court, which has been allowed by the judgment under appeal.

The learned Single Judge opined that though no period of limitation has been prescribed but it is well settled that where no period of limitation has been prescribed for exercise of power, it has to be exercised in a reasonable manner within a reasonable time. What in a given case is reasonable within which the power can be exercised depends upon the facts and circumstances of each case. In support of his conclusion, the learned Single Judge has referred to a few decisions of Supreme Court and of this Court. The learned Single Judge also noticed the fact that finding about possession noticed by the trial court, on the basis of material which was not held to be spurious or false, could not have been set at naught in exercise of powers by the Board under Section 221 after 20 years of the decree without considering all aspects of the matter.

Learned counsel for the appellants vehemently urged that learned Single Judge referred to a decision of this Court in case of State of Rajasthan vs. Teja and others reported in 2005 (1) DNJ (Raj.) 162, which in turn has referred to an earlier Division Bench judgment in Anandi Lal's case. In Anandi Lal's case, this Court had opined that one year is the outer limit for exercise of powers under Section 221 and the said judgment has since been over ruled by the Full Bench, therefore, the judgment is founded on a over ruled decision.

This contention is noticed to be rejected.

Learned Single Judge has clearly set out the principle that where there is no period of limitation prescribed for exercise of power, the power is required to be exercised within reasonable time so that the same does not fall under the category of arbitrary exercise of power. He has stated this principle in following terms:

> "There is no doubt that no limitation is prescribed for exercising powers under Section 221 of the Act of 1955, however, in view of the judgments referred above such a power is always required to be exercised without any unreasonable delay and with all diligence."

It is well settled proposition which hardly requires any elaboration and principle has been correctly stated by the learned Single Judge. The fact that in one of the judgments relied upon by the learned Single Judge reference has been made to an earlier decision which has been over ruled, does not make the judgment itself founded on a over ruled decision. The learned Judge has not relied on principle stated in Anandi Lal's case, wherein, this Court has ruled one year to be outer limit within which the power under Section 221 has to be exercised.

The Second contention of learned counsel was that the decree obtained on 12/7/1968 was void ab initio as it provides for transfer of khatedari land of members of Scheduled Caste to non-Scheduled Caste. This argument is again an argument in despair. The decree based on consent is not a nullity. The land record and the receipts of “bigodi” which may not be conclusive but are sufficient to support the contention about possession prior to date of settlement. Such a decree is not nullity which could be avoided.

There is nothing to suggest that consent was obtained by coercion or misrepresentation. In fact notwithstanding written statement filed after six months of the filing of suit, which was decreed after two years of its presentation, the S.D.M. has not merely recorded the statement

of defendants but also verified the possession of plaintiffs since before the date of settlement as cultivators. Even the objectors do not say that admission in pleading was erroneously made by their predecessors. We are not impressed with the contention that decree passed by SDM should be ignored as void ab initio.

Unfortunately, the Board of Revenue has assumed that it is a case of transfer of land of members of Scheduled Caste to Non-Scheduled Caste without any foundation. Khasra Girdawari may not be a record of right, but certainly it is a record to show as to who is in possession as cultivator. If by Khasra Girdawari, it is settled that before the settlement, the petitioners were the cultivators and having possession of the land, the transfer of the land by members of Scheduled Caste to Non-Scheduled Caste after commencement of the Rajasthan Tenancy Act or after entries were made in pursuance of settlement cannot be sustained. Section 42, putting an embargo on the transfer of land by Scheduled Caste person to non-Scheduled Caste is only creation of Rajasthan Tenancy Act . There is nothing to suggest that respondents' predecessors ever entered as khatedars before Samvat year 2016. The entry made in 2016 was made on the basis of previous record of possession, which was obviously wrong because no previous record showing the predecessors of objectors as khatedars or even in cultivatory possession has come forward. Therefore, it was not a case in which a

presumption could have been drawn after twenty years of the passing of the decree in the manner in which the Board of Revenue has found in a very casual way, to say the least, in setting aside the decree passed in favour of predecessors of present respondent petitioners.

In the aforesaid circumstances, we are clearly of the opinion that learned Single Judge was justified in holding that the power under Section 221 has been exercised by the Board after inordinate delay without noticing the fact situation existing before settlement. Apparently no strait jacket formula can be devised to set outer or inner limit of exercise of power where no period of limitation has been prescribed or fixed. It depends upon the facts and circumstances of each case and looking to the facts of present case, learned Single Judge rightly reached to the conclusion that power has been exercised after inordinate delay and such exercise of power cannot be sustained. We have otherwise also found that on merit also order of Board of Revenue is unsustainable.

Accordingly, the appeal fails and is hereby dismissed in limine.

(R.P.VYAS), J. (RAJESH BALIA), J.

Pankaj Baweja